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STUDENT DATA AND PRIVACY

Federal law provides for the protection of student records. FERPA (the Family Educational Rights and Privacy Act) found in 20 USC §1232g and 34 CFR Part 99 provides requirements that public schools must satisfy and follow in creating, maintaining and sharing student records. This article will start with basic FERPA provisions and conclude with why FERPA regulations are central to the work that UPPAC does. Some basics:

- FERPA protects student records and data. FERPA does not control which parent can attend parent/teacher conference or who should be the emergency contact on a third grader's school "pink card."
- Parents or eligible students have the right to inspect and review their own children's or their own student records. Information about other students is generally unavailable to nosy individuals.
- Generally, school must have written permission from the parent/eligible student before releasing any information from a student's education record. FERPA allows (but does not

require) release of some student information under limited circumstances—some examples:

- ◊ to [public school] officials with legitimate educational interest;
- ◊ to other schools to which a student is transferring;
- ◊ to specified officials for audit or evaluation purposes;
- ◊ to comply with a judicial order or lawfully issued subpoena;
- ◊ to organizations conducting certain studies for/on behalf of the school;
- ◊ to appropriate parties in cases of health/safety emergencies.
- Schools may disclose, without consent, "directory" information such as a student's name, address, telephone number, date and place of birth, honors and awards, and dates of attendance. **However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify**

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YOUR QUESTIONS

(Continued from page 1)

Q: My son was suspended for the final 9 days of school—but he will still graduate. The school will not allow him to walk in the graduation exercises. We are mad. He is broken-hearted. Is this legal? – Angry Mom



A: Your son's property right is in the credit he has earned and the diploma. The graduation exercises, though very important symbolically, are not a "property right." The school is legally OK to limit participants in graduation to those students who are in good standing at school.

Q: A teacher was non-renewed by the school district and left school without notice last week—without finishing his grades and end-of-year work. According to some of the students, the teacher said they could hand in late work. How do we collect this work and give the students their grades? – Uncertain Principal

A: There are only a few court cases about teachers' authority to give grades—and rare occasions where administrators change grades or give grades in a teacher's absence. Court cases are consistent that teachers' grades that are legitimately awarded should be honored. Grades may

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parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school. **Parents should note that if they request that their students' directory information not be used or shared—their children could miss out on great media exposure and appreciation—as athletes, musicians and scholars.**

UPPAC staff members are very protective of any student information that we receive in the course of investigations. But in many cases, UPPAC investigators must talk to students. They must ask

students questions. Usually parents are involved in those discussions, as they should be. Occasionally investigators must look at student information. UPPAC investigators are attorneys and education professionals. They understand and respect the sanctity of student records and student information. But parents and school personnel should understand that FERPA allows educational professionals appropriate access to student information necessary for investigations of educator misconduct. That information will always be guarded by UPPAC and personal information about students is protected. The vigorous and appropriate investigation of allegations of misconduct poses a challenging Catch-22 for UPPAC attorneys: Students must be safe at school and sometimes student information factors into important investigations. Trust, knowledge and professionalism are essential to balance the two crucial concerns.



APRIL UPPAC CASES

The Utah State Board of Education to no action on educator licenses in the month of April

CASE OF THE MONTH—INAPPROPRIATE MATERIALS ON SCHOOL COMPUTERS

Of the 54 current UPPAC cases, 5 involve educators who viewed inappropriate materials at school or on school property. That is almost 10% of UPPAC's investigations. While it is certainly not a rampant problem among Utah educators, it is enough of a problem that UPPAC continues to investigate these reports about every other month. The cases UPPAC investigates are rarely the same. In one instance, an educator stayed after school to view inappropriate materials every day for several hours. In another instance, an educator logged onto an inappropriate site on his school laptop while at home, only once, and reported himself because he recognized his actions violated his school's acceptable use policy. He also admitted that he did not want his action to become a personal habit.



The types of sites being accessed range from partially nude Hollywood actresses to really raunchy sexual pictures. Most of the time the inappropriate materials are images or videos, but occasionally, educators have used school equipment to send email messages or instant messages with inappropriate sexually suggestive language. While most educators who use school equipment to view inappropriate materials are very secretive, especially with students, in one instance a teacher failed to close out an image of a nude woman on his desktop; a student standing nearby saw it.

Regardless of the frequency, the severity, the form, or the secrecy—knowingly possessing inappropriate material on a school computer is a violation of the Utah Educator Standards and of state law. Utah law states that “a person is guilty of accessing pornographic or indecent material on school property when the person willfully or knowingly creates, views, or otherwise gains access to pornographic or indecent material while present on school property.” Utah Code Ann. §76-10-1235. An offense under this chapter is a class A misdemeanor if the person is 18 years or older. Districts should be reporting known offenses to UPPAC **and to local law enforcement**, as well. UPPAC will conduct a thorough investigation and details of each case may affect the penalty, but these matters almost always result in a suspension of a license.

To Get a weekly roundup from our blog, UtahPublicEducation.org, click here:



be given or changed only for fraud, discrimination, arbitrariness on teacher's part.

Examples: teacher gives a grade to student because student's parent paid the teacher. Not a very realistic



scenario, but principal could change the grade to what the student earned. Teacher's records reveal that only girls earned F grades. Girls' grades,

work and scores could be reevaluated—and changed by the Principal. Following this logic, if a teacher left school and is unavailable (or unwilling) to complete final grades, school administrators could (and should) gather student work, evaluate the work based on objective standards and finish the grading process. A well-considered process is more appropriate and legally defensible than giving all students A grades or even C grades.

Q: My daughter's third grade teacher was wonderful! I would like to give her a small gift to say "thank you"—but I don't want the teacher to get in trouble for taking a "bribe" and I don't want to do anything wrong. What can I do? —Appreciative Dad

A: The state law has recently changed regarding these types of gifts to public employees. However, under both old and new laws, giving a thank you or appreciation gift to a

Losing a teaching license for viewing inappropriate materials on school property is not necessarily the end of an educator's career, however. UPPAC and the State Board of Education require extensive work on the part of the educator prior to the educator seeking reinstatement of his license. Reinstatement hearings for these types of violations are more common than for any other single type of violation. Typically educators seeking reinstatement are required to seek counseling. Counseling must be "frequent and long term" and specific to the educator misconduct or addiction. While viewing inappropriate materials is not always indicative of an underlying addiction to such materials, viewing them on school property suggests an inability to control the behavior, which does affect an educator's responsibilities in the classroom.

While UPPAC and the Board do not assume those who view inappropriate materials are sexually deviant or have a sexual interest in children, one educator recently seeking reinstatement honestly acknowledged that viewing such materials definitely negatively influenced his teaching. He explained that he lost interest in preparing lesson plans and grading papers, and that his patience was shorter with his students. He explained that his trigger for viewing inappropriate materials was boredom. Instead of dealing with his boredom in healthy, productive ways, he turned to the computer and searched inappropriate sites. No students were exposed to the sites this educator was viewing, but the potential for a student to see such material is seriously detrimental to the classroom setting,

Viewing inappropriate materials is a very serious matter. UPPAC (and its investigators) look forward to the day there is only one report—or less!—a year. **DON'T DO IT!**

WHAT IS UPPAC?

UPPAC is a committee of nine educators and two community members charged with maintain and promoting a high standard of professional conduct and ethics among Utah teachers. It is advisory to the Utah State Board of Education in making recommendations regarding educator licensing and may take appropriate disciplinary action regarding educator misconduct.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the State Office.

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teacher (stay under \$50 to be safe!) is appropriate for you to give and ethical for her to receive.

Q: One of the local school board members would like to do Dibels testing for an elementary school near her home. Can the board member be paid for her work at the same hourly wage as other parent tester/employees? – Superintendent

A: Unfortunately no. Utah law (Section 20A-4-202(4)) provides that a board member cannot be an employee of her district during the time she is a board member.

UPPAC BY THE NUMBERS

UPPAC staff added a [new webpage](#) to the UPPAC website to help educators and their supervisors understand the importance of educators self-reporting recent arrests. The page has a link to a form to notify UPPAC of the incident and a flyer to distribute around your schools!

State Board of Education Rule 277-516 directs licensed educators to report arrests—**reports should be made to the educator's District Superintendent or Charter School Director within 48 hours! District administrators and charter school directors MUST report to UPPAC within an additional 48 hours. Failure to report arrest may result in licensing action.**

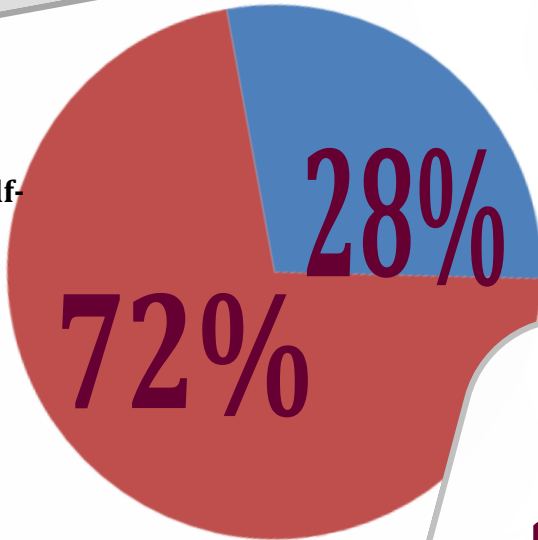
46 UPPAC has held 46 expedited hearings 2012-2013.

30

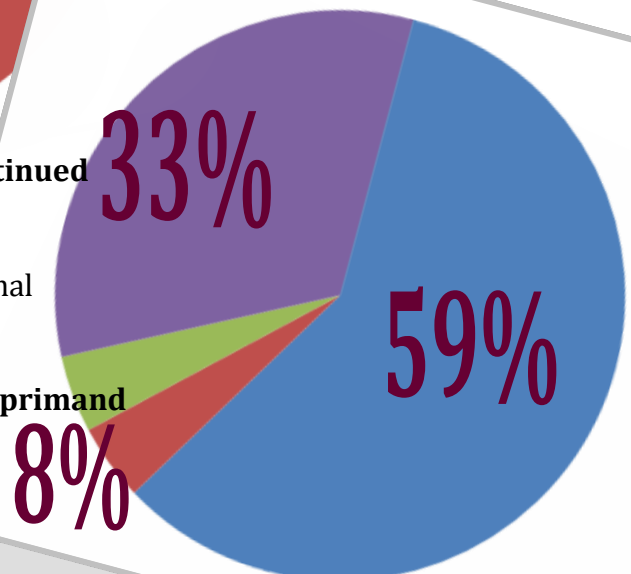
30 Minutes—that is about how long an expedited hearing takes. **That is 23 hours of hearings—plus follow-up paper work!**

Who self-reported?

- **72% did not self-report arrests.**
- 28% did report.



- **59% of expedited hearings resulted in continued licensing.** No further investigation.
- **33% of cases are still open,** pending additional information.
- **8% of the cases ended in either a letter of reprimand with probation or a letter of warning.**



The reporting and follow up work is worth it and important! **Awareness of the self-reporting requirement is growing. We need to continue to get the word out to teachers.** They are role models for young people.

